

Initially, the Applicants would like to thank the Examiner for the courteous telephone interview held on January 29, 2003. During the telephone interview, the Examiner stated that the claims to the surge layer was merely a future intended use of the structure and the term "surge layer" did not limit the claims. Although the Applicants disagree with the Examiner, in order to advance the prosecution of the above-identified application, Applicants have amended the claims to claim a personal care product, as was discussed in the interview. The Examiner agreed that if an RCE was filed in conjunction with this amendment, a first action Final Rejection would not be issued. Further, the Examiner suggested that the claims include the claimed subject matter of claim 41.

Claims 1, 2 and 4-15, 17 and 20 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Bishop et al., U.S. Pat. No. 5,486,166, in view of Thompson et al., U.S. Pat. No. 5,368,926, and Proxmire et al. U.S. Pat. No. 5,192,606.

Claims 3, 16, 18, and 19 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Bishop et al., U.S. Pat. No. 5,486,166, in view of Thompson et al., U.S. Pat. No. 5,368,926, Proxmire et al. U.S. Pat. No. 5,192,606 and Powers U.S. Pat. No. 5,597,647.

These rejections are respectfully **traversed** to the extent the rejections may apply to the newly added claims.

The present invention, as claimed in the independent claim, is directed to a personal care product having a top sheet, an absorbent core and a surge layer. To break the independent claim into its individual elements, this claim claims a surge layer positioned between a top sheet and an absorbent core of a personal care product, wherein the surge layer comprises:

1. a first layer which is a compression resistant creased layer, and
2. a second layer having a density between 0.01 and 0.05 g/cc;

wherein the second layer is adjacent to the first layer and the first and second layers are bonded together.

As stated on page 2 of the Office Action dated June 26, 2002, the Examiner states "Bishop's absorbent person care article comprises a surge layer (first layer) disposed between the body side liner (second layer) and the absorbent core (third layer)." The entire premise of

the Examiner's rejections is that the surge layer of Bishop et al. is the first layer of the Applicant's claims, the body side liner (top sheet) of Bishop et al. is the second layer of the Applicant's claims and the absorbent core is a third layer of the Applicant's claims. To remedy the deficiencies of Bishop et al., the Examiner relies upon the teachings of Proxmire et al. to shown that a body side liner (top sheet) having the properties of the Applicants' claim second layer of the surge have been used in the art. Further, the Examiner relies upon Thompson to show that it is known in the art to crease a surge layer.

However, the Applicants' claims have been amended to clearly distinguish the surge layer from the body side liner and the absorbent core and the claims require that all three layers are present in the personal care article. As claimed, the surge layer is multi-layered and has a first layer which is a compression resistant creased layer, and a second layer having a density between 0.01 and 0.05 g/cc; wherein the second layer is adjacent to the first layer and the first and second layers are bonded together. The references, as relied upon by the Examiner, do not teach the multi-layer surge layer of the Applicants' claimed personal care product, in conjunction with a top sheet and an absorbent core.

As was pointed out in the Amendment filed September 17, 2002, a surge layer is one of several layers of a personal care product. A surge layer is typically located between a body side liner (top sheet) and an absorbent layer and serves to temporarily contain a surge of an insulting liquid and hold that liquid until the liquid can be absorbed by the absorbent layer. The body side liner; however, allows the insulting liquid to rapidly pass through the liner and away from the user. In clear contrast, a surge layer temporarily absorbs, holds and then distributes the liquid to the absorbent layer. A surge layer is needed since absorbent layers typically are slow in absorbing liquids, as is recognized by Bishop et al. in column 1, lines 33-45. Clearly, a surge layer has a completely different function from a body side liner.

Similarly, the absorbent layer has a different function from the surge layer. The function of absorbent layer is to hold the insulting fluid released from the surge layer until the personal care product is replaced. Stated another way, the absorbent layer serves to "permanently" hold the insulting liquid, while the purpose of the surge layer is to temporarily hold the insulting liquid until it can be absorbed by the absorbent layer.

As is pointed out above, a surge layer has an art recognized function. The function is completely different from the body side liner. One skilled in the art would not look to the technology of the body side liner or the technology of the absorbent layer to solve a problem

with the surge layer. It is again pointed out that the claims are directed to a personal care product comprising a top sheet (body side liner), an absorbent core and the surge layer.

In responding to this argument in the Final Rejection, the Examiner summarily dismisses this argument on the grounds that the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product, citing *Ex parte Macham*, 2 USPQ2d 1647 (Bd. Pat. App. 1987).

First, reliance on *Macham* is misplaced. In *Macham*, a single prior art reference was used to reject a claim to an apparatus, where the single prior art reference teaches the same structure of the apparatus claimed. In contrast, the in order to supposedly show all of the features of the present invention, the Examiner is picking and choosing information from at least three references. In order for *Macham* to apply, all of the structural limitations of the claims would have to be shown in a single reference.

Next, in the Final Rejection, the Examiner finds that Applicants have used piecemeal analysis of the references in arguing non-obviousness. In response, Applicants point out that they have responded to each of the references relied upon by the Examiner by specifically pointing out why the portions of each reference relied upon by the Examiner fails to remedy the deficiencies of the other references relied upon by the Examiner. This is not a piecemeal analysis of the references, but is an explanation why one skilled in the art would not pick and choose from the references, as the Examiner has done. In any event, the claims have been amended in such a way to distinguish each of the layers of a personal care product from the other layers and the Examiners reliance of the body side liner to reject a feature of the surge layer is now misplaced.

The rejections made in the Final rejection are not tenable against the newly added claims. The references relied upon to reject the surge layer per se, fail to teach all of the layers of the personal care product now claimed. Specifically, the way the Examiner relied upon the references in the prior rejections, the surge layer would not have two layers or three layers as claimed, and/or the personal care product would be void of the body side liner and absorbent core, as presently claimed, since the Examiner relied upon the surge layer and absorbent core of Bishop et al. to show the two or three layers of the surge layer previously claimed.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance over the prior art relied upon by the Examiner in the Final Rejection.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 770-587-7204.

Respectfully submitted,

CREAGAN ET AL.

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CERTIFICATE OF MAILING

I, Ralph H. Dean, Jr., hereby certify that on February 27, 2003 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231.

By: _____

Ralph H. Dean, Jr.